

when he took out letters of administration on the estate of his father, but between that time and the date of the order of April, 1851, twelve years intervened, of which upwards of ten were spent in this litigation, and during that time it certainly was the duty of the complainant to ascertain by inquiries, properly directed, who were likely to give information upon the subject. Nothing would seem to be more natural in such circumstances, than that he should inquire who constituted the family of his uncle, Jesse Hughes, during the period in question, and it cannot well be doubted that he could readily have informed himself, and have secured the proof of the witness, if he had taken the necessary steps for the purpose. The allegation in the petition, that the proposed witness removed from the county many years since, is denied by the answer, which avers that he not only did not remove from the county many years back, but that it has been only a few years, and long since the commencement of this suit.

Now, it appears to me, under these circumstances, that it would be contrary to the settled rule of the court upon this subject to permit this same question to be relitigated.

I cannot think the complainant has used "reasonably active diligence in the first instance," to procure the testimony of this witness. He knew, or might have known, that he was a member of the family of Jesse Hughes, from the year 1815, until after the death of Josiah Hughes in 1821. He lived in the county of Somerset until some time after the commencement of this suit, and in Baltimore after he removed from Somerset, and there is no reason to doubt that he might very readily have been communicated with by the complainant, and the information he possessed procured in time to be used before the order now proposed to be opened, was passed.

It certainly seems to me most obvious, that there has been laches or negligence, in this respect, and that it would be a dangerous relaxation of the rule to grant a rehearing of an order, or decree, passed upon a full hearing of both parties, upon the ground now relied upon.

There is, moreover, another objection to opening again this